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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,708	05/17/2001	David M. Shaw	12293-19	4131

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EXAMINER

TAYLOR, NICHOLAS R

ART UNIT PAPER NUMBER

2141

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/859,708	<b>Applicant(s)</b> SHAW, DAVID M.	
	<b>Examiner</b> Nicholas R Taylor	<b>Art Unit</b> 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 5/17/2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/17/2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 1-14 have been examined and rejected.

***Drawings***

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings are informally hand drawn and difficult to read. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Specification***

3. The disclosure is objected to because of the following informality: The note to "DAVID" in line 20 of page 14 should be removed.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 14 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, claim 14 references "code" that is not embodied on a tangible medium.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3 and 5-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Challenger et al. ("A scalable and highly available system for serving dynamic data at frequently accessed web sites"), and further in view of Min et al. ("A load balancing algorithm for a distributed multimedia game server architecture.")

a. As per claims 1, 2, 7, 8, and 9, Challenger teaches the following:

A client-side streaming media player operation comprising:

(a) initiating a DNS SRV query to a first level nameserver having a map of Internet traffic conditions, the query including an identification of the client player; (Challenger, Sections 4.1 & 4.2 and Fig 16-19, wherein the net dispatchers serves the first level, and the identification of the client is inherent in html communications with a web browser)

(b) receiving a response from the first level nameserver based in part on the client player identification, wherein the response comprises a set of one or more tokens, each token including data that the client player can pass back to a second level nameserver to obtain data identifying a set of one or more servers from which the client player may obtain a media stream;

(Challenger, Sections 4.1 & 4.2 and Fig 16-19, wherein the second level servers are the regional web servers)

(c) initiating a DNS query to the second level nameserver; (Challenger, Sections 4.1 & 4.2 and Fig 16-19)

(h) periodically, as the media stream is being rendered, repeating the DNS SRV query to obtain at least one additional token; (Challenger, Section 4.1 & 4.2)

(i) determining whether the first server is providing acceptable service; (Challenger, Section 4.2 wherein the Net Dispatcher is monitoring if the servers are providing acceptable service)

(j) if the first server is not providing acceptable service, using the additional token to identify a second server; (Section 4.2)

(k) receiving additional portion of the media stream from the second server. (Section 4.2)

In Challenger's reference the web page host is the "client" mentioned in the claims. In the above claim Challenger fails to disclose the following:

(d) in response to the query to the second level nameserver, receiving data identifying a set of one or more servers from which the client player may obtain the media stream;

(e) selecting a first server from the set of one or more servers;

(f) receiving the media stream from the first server;

(g) rendering the media stream;

Min teaches the following: in response to the query to the second level nameserver, receiving data identifying a set of one or more servers from which the client player may obtain the media stream; (Min, Section 2, wherein the master server is the second level nameserver); selecting a first server from the set of one or more servers; (Min, Section 2); receiving the media stream from the first server; (Min, Section 2, wherein the game client receives the stream) and rendering the media stream; (Min, Section 2, wherein the game client renders the stream.) In Min's reference the game host is the "client" in the claims.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the above items taught by Min in the system taught by Challenger in order to increase the system's scalability by improving traffic management while preserving a normal connection status. This is stated in view of the recognition in the art, as evidenced by Min, that the network server should have a "scalable architecture" (Min., Section 2 paragraph 1) and that the server should "check connections to periodically confirm that the players are in a normal status of communication" (Min, Section 2 last paragraph.)

b. As per claims 3 and 10 the following is disclosed, further in view of the described Challenger-Min system above: Initiating a query to each of the set of one or more servers to obtain data about the server's capabilities; and timing a response from each of the set of one or more servers; and determining which of the set of one or more servers provides a fastest response. (Challenger, Section 4.1, more specifically the

Open Shortest Path First protocol that determines which route to take by assigning a cost based upon traversal time)

c. As per claims 5 and 11 the following is disclosed, further in view of the described Challenger-Min system above: the step of transmitting given data to the selected best server. (Min, Section 2)

d. As per claims 6 and 12 the following is disclosed, further in view of the described Challenger-Min system above: the given data containing some of the data generated as a result of the query to each of the set of one or more servers. (Min, Section 2, wherein the described transaction would inherently contain some information about the server)

e. As per claim 13 the following is disclosed, further in view of the described Challenger-Min system above: the streaming media being of a given proprietary format. (Min, Section 2, in referencing "Ultima On-line®" style game information)

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Challenger et al. and Min et al. as combined above, and further in view of Crowcroft ("The Real Time Stream Protocol – RTSP).

Challenger-Min's system discloses the parent claims 1 and 3, yet fails to teach the method wherein the query is an RTSP OPTIONS command. Crowcroft's art

teaches the method wherein the query is an RTSP OPTIONS command (2<sup>nd</sup> to last paragraph.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the method wherein the query is an RTSP OPTIONS command as taught by Crowcroft, because doing so facilitates more applications for the system. This is stated in view of the recognition in the art, as evidenced by Crowcroft, that "RTSP is intended to be a generic protocol for manipulation of continuous media over the Internet" (2<sup>nd</sup> to Last paragraph).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patent numbers were considered: 6,141,759, 6,351,775, 6,134,588, and 6,078,953.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas R Taylor whose telephone number is (703) 605-4326. The examiner can normally be reached on Monday-Friday, 8:30am to 5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 2141

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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